

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ALLSTATE INSURANCE COMPANY,

No. C-10-0077 EMC

Plaintiff,

v.

**ORDER DENYING DEFENDANT'S  
MOTION TO STAY**RICHARD BARNETT, *et al.*,**(Docket No. 82)**Defendants.  

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Defendant Richard Barnett has moved to stay the proceedings in this case pending completion of the *Cumis* fee arbitration. Plaintiff Allstate Insurance Co. has opposed the motion. Having considered the parties' briefs and all other evidence of record, the Court hereby **DENIES** the request for a stay.

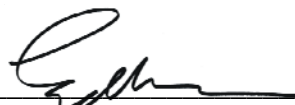
Mr. Barnett's argument is, in essence, that a stay is required by *Truck Insurance Exchange v. Superior Court*, 51 Cal. App. 4th 985 (1996). The Court disagrees. In *Truck Insurance*, the state court simply held that a *Cumis* fee arbitration could take place before the coverage action was resolved without any prejudice to the insurer -- *i.e.*, after the arbitration, the insurer could still litigate the duties to defend and indemnify. The court did not hold that the arbitration *must* take place first. Notably, the court stated only that "it would undermine the concept of reservation of rights to *preclude* resolution of the issue [*i.e.*, a dispute between the insured and insurer over a *Cumis* fee] until after the [coverage] action has been decided." *Id.* at 998 (emphasis added).

1 Because *Truck Insurance* does not require a stay, and because Mr. Barnett has not identified  
2 any other basis to stay, his motion is denied. The Court is not unsympathetic to Mr. Barnett's  
3 assertion that he will suffer hardship if the arbitration is not completed first. However, as a matter of  
4 judicial efficiency, it makes little sense to stay the proceedings here pending completion of the  
5 arbitration. Resolution of the coverage issue here could actually moot out the arbitration, as Allstate  
6 points out. Moreover, there are no overlapping issues between the arbitration and the instant case  
7 such that factual and/or legal issues might be narrowed if the arbitration were to proceed first. *See*  
8 *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1112 (9th Cir. 2005) (concluding that "neither the balance  
9 of hardships between the parties, nor the prospect of narrowing the factual and legal issues in the  
10 other proceeding, justifies a stay").

11 This order disposes of Docket No. 82.

12  
13 IT IS SO ORDERED.

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15 Dated: May 25, 2011

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EDWARD M. CHEN  
United States District Judge